

Remarks

RE: Patent Appl. for Bullock
Serial No. 09/886,937
Filed 6/21/2001
For Shaken not Stirred

US PATENT OFFICE

Date April 24, 2006
Art Unit 1638
Examiner Helmer, Georgia
Action: Office action response

To: The Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Remarks

The Applicant's attorney requests that this response be combined and read in conjunction with the response of Dec 16, 2005.

Claim Rejection -35 USC 103

Claims 1-6 were rejected under 35 USC 103(a) as being unpatentable over Coffee et al US 5,302,523 claims 1, 4, and 5 in view of the state of the art evidenced by Cole-Parmer Instrument Co. The Examiner alleges that Applicant is making conclusionary statement without evidentiary basis.

The Applicant notes that the Genie Shakers evidence supplied by the Examiner shows the disruptor Genie Shaker which was discussed in the Office action response. The applicant's attorney notes that the use of the word 'shaker' in the Genie catalog is shown as a whirlpool motion. The shaking motion of the present invention is not vortexing i.e. Whirlpool motion. In fact in the specification in lines 5-15 of page instead the shaking motion of the present invention is described on pages 12 and 13, lines 29-end and 1-9 respectively. The whirlpool motion taught by the Genie article is not the shaking motion of the present invention.

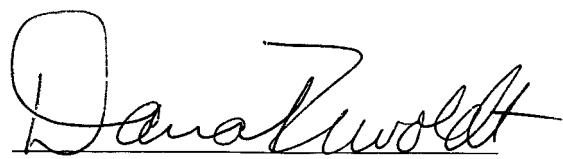
Additionally, as indicated in the Dec 2005 response the Genie article supplied by the Examiner teaches the cellular disruption that the applicant's attorney was discussing in the December 2005 office action. This is not a conclusionary statement. The Genie article itself indicates that when the multidirectional action agitates and vortexes the result is "dramatically increased disruption efficiency- ideal for difficult bacterial cell

disruptions..." Thus this article teaches that agitation in a multidirectional action and vortexing will lyse even difficult cells. The present invention on the other hand is not trying to lyse cells as a lysed cell is not viable. Instead the present invention using its described shaking motion is producing live viable cells not lysed cells.

The applicant's attorney notes that the discussion concerning the Examiner's 103 rejection was included in the previous office action although it was not titled differently from the 102 rejection. Please note the 103 response is included on pages 10-13 in the discussion on what is obvious. In light of the Attorney's arguments concerning the differences between the prior art whirlpool motion and the motion of the present invention and in light of the teaching of the prior art that a multidirectional agitation and whirlpool motion resulted in the lysing of cells which is the opposition of what the present invention is teaching the claims of the present invention are not obvious. The examiner is respectfully requested to remove this rejection.

Double Patenting

The examiner noted that the present invention is subject to a double patenting rejection based on the claims 1-6 in the divisional application. That application, which is in front of the same Examiner, has been amended to withdraw claims 1-6. Therefore, the applicant's attorney requests that the Examiner remove the Double patenting rejection as the other application no longer contains the conflicting claims.



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Certificate of Mailing Under 37 C.F.R. 1.8

I hereby certify that the Response to the Office Action dated March 22, 2006 is being mailed to the Commissioner For Patents, Alexandria VA 22313-1450, on this April 24, 2006.

A handwritten signature in black ink that reads "Dara Resoldt". The signature is written in a cursive style with a fluid, flowing motion.